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May 15, 2002

**Via Electronic Mail Delivery**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554

**Re:   *Ex Parte Presentation***  
**Wireless Access Charges – WT Docket No. 01-316**

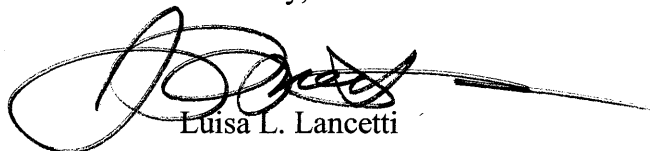
Dear Ms. Dortch:

This letter serves as notification that on this date Luisa Lancetti, Charles McKee and Richard Juhnke (representing Sprint Corporation) met with Matthew Brill (Legal Advisor to Commission Abernathy) to discuss matters in the above-referenced proceeding. A copy of the presentation material discussed at the meeting is attached hereto.

Pursuant to Section 1.1206(b)(1) of the Commission rules, one copy of this letter is being filed with your office electronically. Please associate this letter with the file in the above-captioned proceeding.

Please contact us should you have questions concerning the foregoing.

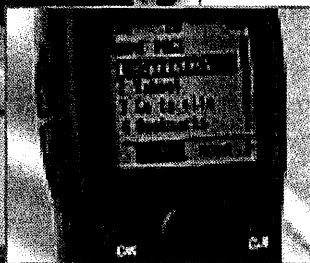
Sincerely,

A handwritten signature in black ink, appearing to be "Luisa L. Lancetti", with a long horizontal line extending to the right.

Luisa L. Lancetti

Attachment

cc:   Matthew Brill



# Wireless Access Charges

WT Docket No. 01-316

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Sprint

May 9, 2002

# Legal Overview

- Wireless carriers provide exchange access services to IXC's.
- Wireless rates for access services are unregulated.
- The existing regulatory regime is CPNP.
- Under the existing orders and regulatory regime, the FCC cannot retroactively prohibit wireless carriers from imposing charges for access to their network.
- Even if the FCC believes current Orders are ambiguous, wireless carriers are entitled to charge for services rendered.
- AT&T's refusal to pay does not create a binding industry standard.
- IXC's have a remedy if wireless rates are too high.

## Wireless Carriers Are Currently Providing Exchange Access Service to IXC's

- The Communications Act acknowledges that wireless carriers provide exchange access service. 47 U.S.C. 332(c)(8). *See also, In the Matter of Implementation of the local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket 96-98, paragraph 1004, ("Congress recognized that some CMRS providers offer telephone exchange and exchange access services.")
- The FCC has held that wireless carriers provide exchange access service: "We also agree with several commenters that many CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act." *Id.* at paragraph 1012.
- AT&T does not deny wireless carriers provide terminating access. AT&T would be unable to provide service to its customers without access to the Sprint PCS network.

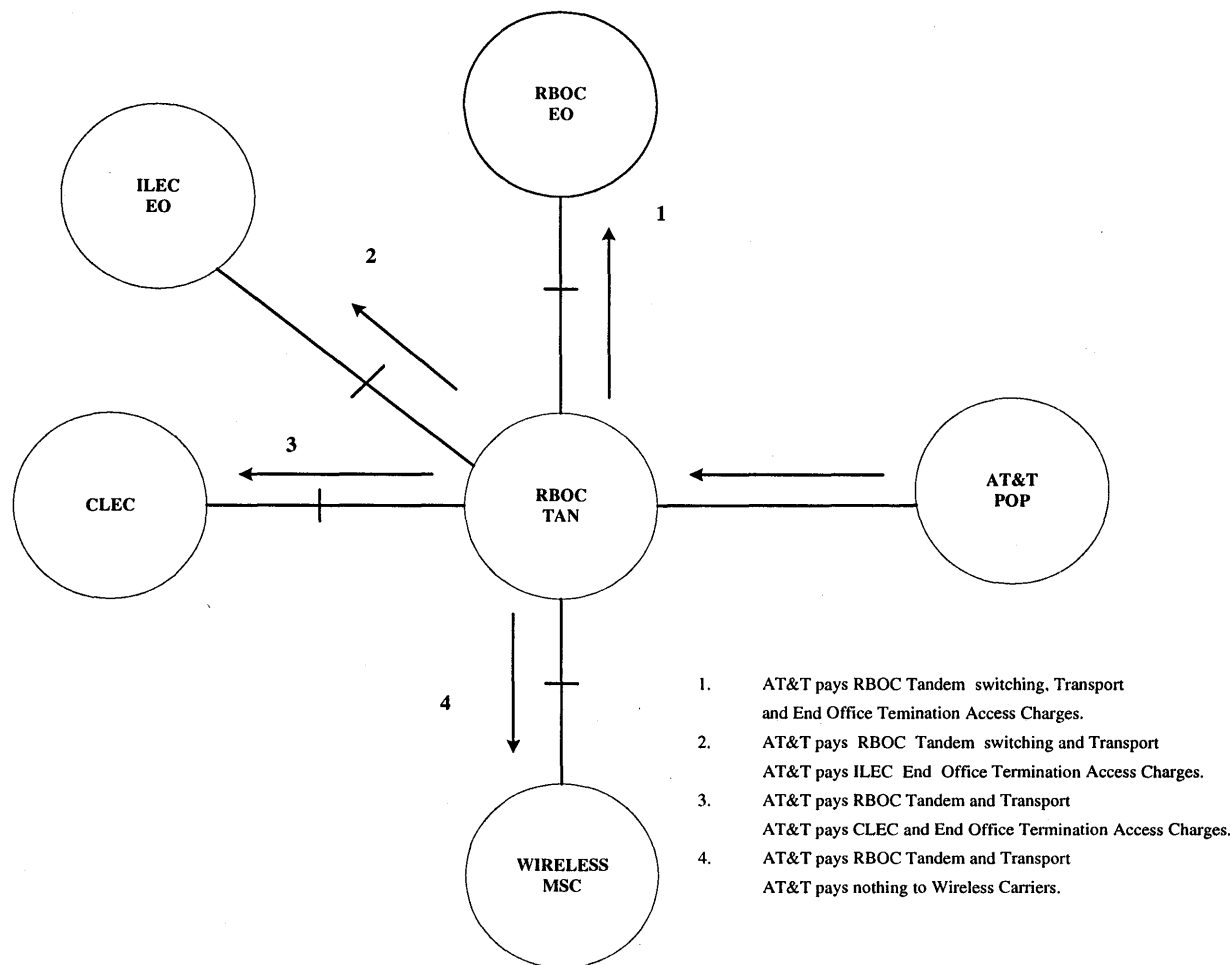
## Wireless Rates for Exchange Access Service are Not Regulated

- Acknowledging the competitive nature of wireless services, the FCC eliminated regulation of wireless access charges, along with the charges to their end user customers and operator services. *In the Matter of implementation of Sections 3(N) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order 9 F.C.C.R. 1411, paragraphs 173 - 179 (March 7, 1994).
- “[W]e will forbear from requiring or permitting CMRS providers to file tariffs for interstate service offered directly by CMRS providers to their customers. **We also will temporarily forbear from requiring or permitting CMRS providers to file tariffs for interstate access service. At this time, because of the presence of competition in the CMRS market, access tariffs seem unnecessary.**” Id. at paragraph 179.
- The FCC has never suggested that wireless carriers should not be compensated for providing services to third parties.

## Calling Party's Network Pays (CPNP) Is the Existing Regulatory Regime

- Calling Party's Network Pays (CPNP) arrangements "are clearly the dominant form of interconnection regulation in the United States and abroad." *In the matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rule Making, paragraph 9.
- "Existing access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC or CMRS, to compensate the called party's carrier for terminating the call." *Id.*
- Under the existing CPNP regulatory structure, AT&T is required to compensate carriers that terminate traffic for them. AT&T does, in fact, compensate every type of carrier that provides terminating services to them -- with the exception of wireless carriers.

# AT&T Proposed Compensation Regime





# FCC Cannot Retroactively Prohibit Wireless Carriers From Charging for Services Rendered

- An FCC Order which retroactively prohibits the imposition of charges for services rendered in an unregulated environment would be improper retroactive rate making. *See, e.g., Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988); *Jahn v. 1-800-FLOWERS.com*, No. 01-299, 2002 U.S. App. LEXIS 5292 (7<sup>th</sup> Cir., March 29, 2002)
- Such a decision would create a retroactive rate of zero despite the fact that AT&T concedes that Sprint PCS incurs costs to terminate traffic on their behalf.
- FCC cannot prohibit a carrier from recovering the cost of providing a service to a third party.
- Wireless carriers have billed and IXC's have paid wireless access charges. Changing the existing regulations would generate more disputes.



## Wireless Carriers are Entitled to Charge for Services Rendered

- Even if the FCC were to find that the existing orders are ambiguous, wireless carriers are still entitled to charge for services rendered.
- Section 201(a) requires all common carriers to provide services upon a reasonable request.
- Section 201(b) requires all carriers to set just and reasonable rates for the provision of such services.
- If the rates charged by the wireless carrier are not just and reasonable, AT&T has a remedy under Section 208.

## Market Negotiations Cannot Resolve This Issue Without FCC Action

- Until the FCC confirms that wireless carriers are entitled to charge for the service they provide, AT&T will have no incentive to negotiate any arrangement with Sprint.
- Sprint has no current ability to block AT&T's traffic. Even if it possessed the technical ability to block AT&T, the Commission has acknowledged that use of such refusals to exchange service as a bargaining tool would degrade the country's telecommunications network. *See, In the Matter of Access Charge Reform*, Seventh Memorandum and Order, CC Docket No. 96-262 (April 27, 2001) paragraph 24.
- The FCC should not confuse the mechanism of enforcement with the right to compensation.

## **Sprint PCS Has not Recovered its Costs from its End-User Customers**

- AT&T argues that Sprint PCS has already recovered its costs of providing exchange access to AT&T because Sprint PCS already charges its end user customers on a metered basis. This argument is flawed on multiple levels:
  - ▶ In a Calling Party's Network Pays environment, the rates charged to end users is irrelevant. Access charges are a matter of intercarrier compensation.
  - ▶ The argument is circular. Sprint PCS is required to bill its customers to cover its costs because AT&T does not pay them.
  - ▶ Literally the argument is not true. Sprint PCS continues to operate at a net loss.
  - ▶ CLECs and ILECs recover costs from their end user customers and no regulatory authority has suggested that they should not be compensated for providing exchange access.

## FCC Can Create a Prospective Safe Harbor if Concern is Wireless Carrier Rates

- In the Access Charge Reform Seventh Report and Order revising the application of access rates by CLECs, the Commission established certain safe harbors for CLEC access rates.
- If the FCC determines that a safe harbor is necessary for wireless carriers (despite the fact that wireless carriers are charging substantially less than most CLECs were charging in the previous complaint cases), it must acknowledge that wireless carriers are not providing terminating access under “substantially similar circumstances using similar facilities” as CLECs or ILECs. *AT&T v. Business Telecom, Inc.*, EB 01-MD-001, FCC 01-185 (May 30, 2001) Paragraph 23.
  - ▶ Mobility (i.e., greater accessibility)
  - ▶ Nationwide Termination (not limited to ILEC or CLEC territories)
  - ▶ Inherently More Traffic-Sensitive Technology which Provides Greater Services
  - ▶ Rural Coverage

## The Refusal of AT&T to Pay Does Not Create a Binding Industry Standard

- Wireless carriers were traditionally required to pay other carriers to accept traffic from them, but the Commission recognized that this was simply anti-competitive conduct designed to take advantage of new entrants.
- AT&T now makes the same argument that they should not be required to pay for services rendered because they have managed to avoid paying for them to date.
- Other IXC's were paying for access services rendered until AT&T's refusal to pay became known through Sprint PCS's court challenge.
- AT&T is either double recovering from their end user customers or it is requiring wireless carriers to subsidize the operation of its network through inclusion of a "zero" rate for terminating to wireless carriers.

## AT&T Has a Remedy if it Believes Sprint PCS' Rates are not Just and Reasonable

- In the CMRS Second Report and Order the FCC found that there was sufficient competition in the CMRS market place to forbear from imposing tariff requirements.
- In so holding the FCC noted: “In the event that a carrier violated Section 201 or 202, the Section 208 complaint process would permit challenges to a carrier’s rates or practices and full compensation for any harm due to violations of the Act.” *In the Matter of implementation of Sections 3(N) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order 9 F.C.C.R. 1411, paragraph 176 (March 7, 1994).
- AT&T has availed itself of this option by filing a counterclaim in Federal District Court and seeking referral to the FCC.



# Policy Overview

## ■ Policy Considerations

- ▶ Wireless carriers offer a chance for real competition in the consumer market.
- ▶ Wireless carriers cannot compete if they are required to pay landline carriers for access to their networks but do not receive compensation from landline carriers when landline carriers use wireless networks.
- ▶ The fact that wireless carriers are forced to recover unpaid costs from their end users is not a justification for discriminatory treatment.
- ▶ There is not a “bill and keep” relationship with IXC.
- ▶ Future policy changes should not be used to justify discriminatory treatment under the current regime.



# Discrimination Against Wireless Carriers Will Inhibit Competition

- The Commission, and specifically Chairman Powell, has articulated a vision of intermodal competition. Wireless networks represent the one of the best opportunities for widespread, full facilities based competition in the local exchange market.
- Intermodal competition cannot occur where wireless carriers pay for access to landline networks but are not paid when landline networks access wireless networks. Moreover, such a policy would be fundamentally inequitable and unsupportable
- FCC continues to impose regulatory obligations on wireless carriers to create a service that parallel's landline services, e.g., LNP, TTY, CALEA and E911.
- FCC cannot expect competition to flourish if wireless carriers are forced to shoulder the regulatory burdens of an incumbent LEC but deny wireless carriers the same revenue sources available to ILECs and CLECs.

## IXCs Do Not Offer “Bill and Keep” to Wireless Carriers

- Bill and Keep is the mutual exchange of services. The Act describes “Bill and Keep” as “the mutual recovery of costs through the offsetting of reciprocal obligations.” 47 U.S.C. 252(d)(2)(B)(i).
- The FCC has held that “Bill and Keep” can only be imposed if “the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so. . .” 47 C.F.R. 51.713(b).
- AT&T provides no services to Sprint PCS. The relationship is entirely one way. Indeed, wireless carriers currently pay IXC's to carry traffic for them, and pay ILECs terminating access charges. AT&T is unwilling to accept wireless traffic without compensation.
- “Bill and Keep” as defined by AT&T simply means wireless end users should pay for the cost of all calls that either originate or terminate to them.

## **Future Policy Changes Do Not Justify Discrimination Under Current Policy**

- While Sprint supports the long term implementation of a bill and keep regime, both Sprint and AT&T have acknowledged that there are multiple problems associated with a bill and keep regime in the access charge arena.
- There is no policy justification for eliminating the revenue side of the CPNP system for wireless carriers while continuing to impose the expense side of the CPNP system.

# The FCC Needs to Answer the Court's Questions

- The FCC's decision cannot be limited to apply only to Sprint v. AT&T. Other wireless carriers are charging access and other interexchange carriers are paying access. AT&T and Sprint are not the only parties involved in this dispute.
- While the impact of the Commission's decision will be limited on a retrospective basis (because only a few carriers have taken the steps required to bill access charges to IXC's), the issue must be resolved for the entire industry.